



# Maryland Qualified Allocation Plan

## For the Allocation of Federal Low Income Housing Tax Credits

Effective \_\_\_\_\_, 2019  
[Draft 1/10/19]

*The Governor approved the initial Qualified Allocation Plan (the "Allocation Plan" and formerly known as the "Plan for the Allocation of Low Income Housing Tax Credit") in Maryland on April 5, 1990. Subsequent amendments to the plan have been approved by the Governor on February 2, 1991, March 24, 1992, December 14, 1993, January 12, 1995, October 1, 1995, October 7, 1999, May 31, 2001, June 12, 2002, December 11, 2003, April 26, 2005, October 19, 2006, May 13, 2008, October 24, 2008, January 24, 2011, July 31, 2013, July 8, 2014, ~~and August 9, 2016, March 19, 2018, and August 1, 2018.~~ The public was provided the opportunity to comment at a public hearing on ~~February 21, 2018~~ \_\_\_\_\_, 2019 concerning the most recent amendments to the Allocation Plan, which was approved by the Governor on ~~March 19, 2018~~ \_\_\_\_\_, 2019. ~~The Allocation Plan was amended on August 1, 2018 to comply with changes in the federal Consolidated Appropriations Act of 2018.~~*

Maryland Department of Housing and Community Development  
Community Development Administration  
7800 Harkins Road  
Lanham, Maryland 20706  
(301)429-7854 Phone  
(800) 543-4505 Toll Free  
(800) 735-2258 TTY  
[www.dhcd.maryland.gov](http://www.dhcd.maryland.gov)

This Blackline was created using the 11/30/2018  
Draft of the Maryland Qualified Allocation Plan.

Larry Hogan, Governor  
Boyd K. Rutherford, Lt. Governor  
Kenneth C. Holt, Secretary  
Tony Reed, Deputy Secretary



## Table of Contents

A. Introduction.....	1
A.1 In General .....	1
A.2 Determining the Amount of Tax Credit.....	1
A.3 Income and Rent Restrictions.....	1
B. The Allocation Plan.....	2
B.1 Introduction .....	2
B.2 Reservation of Tax Credits .....	2
B.3 Adoption of the Allocation Plan .....	3
B.4 Administration of the Allocation Plan .....	4
C. Application Process and Fees .....	4
C.1 Application Process .....	4
C.2 Acquisition Credits .....	5
C.3 Fees .....	5
D. Reservations .....	5
D.1 In General .....	5
D.2 Locally Issued Bonds .....	6
D.3 Forward Reservations .....	6
D.4 Increase of Reservations .....	7
D.5 Tax Credit Rates .....	7
D.6 Cancellation of Reservation.....	8
D.7 Limitations on Reservations .....	8
E. Allocations .....	9
E.1 In General .....	9
E.2 Limitations on Eligible Basis.....	9
E.3 State 30% Basis Boost.....	9
E.4 Financing with Other Programs .....	10
E.5 Balancing RHFP Funds and Tax Credits.....	10
E.6 Request for a Carryover Allocation .....	10
E.7 The 10% Expenditure Test .....	10
E.8 Placed in Service Evaluation/IRS Form(s) 8609.....	11
E.9 Allocation Amendment.....	12

E.10 Cancellation of Allocation .....	12
F. Set-Asides .....	13
F.1 Non-Profit Set-Aside .....	13
<u>F.2 Permanent Supportive Housing Set-Aside .....</u>	<u>14</u>
<u>F.3 Other Set-Asides .....</u>	<u>1615</u>
G. Allocation Criteria .....	<u>1615</u>
H. Project Monitoring.....	<u>1716</u>
H.1 Introduction.....	<u>1716</u>
H.2 Recordkeeping and Record Retention .....	<u>1716</u>
H.3 HUD Reporting Requirements .....	<u>1817</u>
H.4 Certification and Review .....	<u>1817</u>
H.5 Inspection.....	<u>2221</u>
H.6 Notification of Non-Compliance .....	<u>2322</u>
H.7 Retention of Records by CDA.....	<u>2322</u>
H.8 Compliance Monitoring .....	<u>2322</u>
H.9 Compliance Monitoring Re-Review .....	<u>2423</u>
H.10 Changes in Monitoring Procedures.....	<u>2423</u>
I. Miscellaneous .....	<u>2423</u>
I.1 Subsidy Layering Review .....	<u>2423</u>
I.2 Qualified Contracts .....	<u>2524</u>
I.3 Correspondence and Submittals .....	<u>2524</u>
I.4 Partial Invalidity .....	<u>2524</u>
I.5 Disclaimer .....	<u>2524</u>
APPENDIX A: Maryland Department of Housing and Community Development Multifamily Rental Financing Program Guide .....	<u>2726</u>

## A. Introduction

### A.1 In General

The 1986 Tax Reform Act created the low-income housing tax credit program under §42 of the Internal Revenue Code of 1986, as amended (together with the Treasury Regulations promulgated thereunder, the Internal Revenue Code), to encourage the private sector to invest in the construction and rehabilitation of housing for low and moderate income individuals and families by providing qualified project owners with Low-Income Housing Tax Credits (LIHTC) against their federal income tax obligations. The Governor of the State of Maryland has designated the Maryland Department of Housing and Community Development (DHCD) as the agency authorized to allocate LIHTC for residential rental projects in Maryland under this program (Maryland LIHTC Program). The Secretary of DHCD (Secretary) has assigned this function to the Community Development Administration (CDA), a unit of the Division of Development Finance of DHCD. LIHTC are available to project owners of qualifying residential rental projects that meet certain low-income occupancy and rent restrictions.

Generally, each state may allocate a specified amount of LIHTC annually, based primarily on the state's population. In addition, states that allocate 100% of their annual authority are eligible for additional authority for the following year from a national pool of unused LIHTC authority.

### A.2 Determining the Amount of Tax Credit

LIHTC are generally provided to project owners in equal annual installments over a ten (10) year period. LIHTC may not exceed the applicable percentage of the qualified basis of each low income building in the project as defined in §42(b) and §42(c) of the Internal Revenue Code. The applicable percentage is the percentage that will yield, over the ten (10) year LIHTC period, LIHTC with a present value equal to either 70% or 30% of the qualified basis of the building. New construction and rehabilitation projects that are not federally subsidized are eligible for the 70% present value LIHTC. Projects financed with federally tax-exempt bonds, or which involve the acquisition of existing buildings (when combined with eligible rehabilitation) are eligible for the 30% present value LIHTC. The Internal Revenue Code also requires administering agencies to allocate only the amount necessary to make projects financially feasible. CDA makes this determination at three times in the tax credit process: at the time of application; at the time of reservation/issuance of the eligibility letter pursuant to §42 (m)(i) and (2) of the Internal Revenue Code; and finally at the time the building is placed in service.

### A.3 Income and Rent Restrictions

In accordance with changes to §42 of the Internal Revenue Code by the federal Consolidated Appropriations Act of 2018, and effective in the State of Maryland as of August 1, 2018, the project owner must select one of the following three (3) set-aside elections (the Set-Aside Election): 1) at least 20% of the housing units in the project for households with incomes at or below 50% of the area median gross income (the 20@50 Set-Aside; 2) at least 40% of the housing units in the project for households with incomes at or below 60% of the area median gross income (the 40@60 Set-Aside); or 3) at least 40% of the housing units in the project for households with incomes at or below 80% of the area median gross income so long as the average gross income for the restricted

units in the project does not exceed 60% of the area median gross income (the Income Averaging Set-Aside). Household size is based on certain assumptions involving the bedroom configurations of the rental units. Rents for LIHTC units may not exceed 30% of the applicable income limit. The Set-Aside Election must be made, and is irrevocable, no later than the date of the execution of the project's IRS Form 8609 by CDA and the project owner in accordance with the requirements of Section E.8, below.

The changes to the Internal Revenue Code made by the federal Consolidated Appropriations Act of 2018 and described above do not extend to the set-aside requirements associated with the issuance of tax-exempt bonds in accordance with §142 of the Internal Revenue Code. Projects that receive an allocation of 4% LIHTC in conjunction with an issuance of tax-exempt bonds must meet the set-aside requirements of both §42 and §142 of the Internal Revenue Code.

The housing units must be set aside for low-income residents for a compliance period of fifteen (15) years (Initial Compliance Period). In addition, the Internal Revenue Code requires the project owner to enter into an Extended Low-Income Housing Covenant (LIHTC Covenant) under which the low-income housing set-aside (meaning the actual number of units that generate LIHTC and are set aside for low-income tenants), the rent restrictions, and other requirements must continue for an additional period of at least fifteen (15) years beyond the Initial Compliance Period (together, the Extended Use Period). The Internal Revenue Code permits a project owner to opt out of the program restrictions after the initial fifteen (15) year compliance period under certain circumstances provided the Maryland LIHTC Program does not provide more restrictive standards.

## **B. The Allocation Plan**

### **B.1 Introduction**

The Internal Revenue Code requires states to adopt an Allocation Plan to allocate LIHTC to projects based on state priorities and federally mandated requirements. This Allocation Plan is intended to ensure that only projects that comply with the Internal Revenue Code and address the housing priorities of Maryland are selected for an allocation of LIHTC. This Allocation Plan sets forth CDA's selection criteria for use in determining housing priorities for allocating LIHTC.

### **B.2 Reservation of Tax Credits**

LIHTC are reserved for eligible housing projects on a competitive basis, except those financed with tax-exempt bonds, which are awarded on a non-competitive project-by-project basis. Applications for competitive LIHTC will be solicited by CDA by Public Notice in one round per year. If needed, additional rounds of competition may be held until all available resources have been reserved. LIHTC reservations are based on the criteria outlined in this Allocation Plan (see [Section G](#) - Allocation Criteria below) and in CDA's Multifamily Rental Financing Program Guide (the Guide), attached to and made a part of this Allocation Plan as [Appendix A](#). Reservations are only an agreement between the applicant and CDA to continue the processing of the application for an allocation of LIHTC. Reservations are not an allocation of LIHTC from the State's ceiling and are not binding on the Internal Revenue Service (IRS).

The Maryland LIHTC Program reservation and allocation criteria and the competitive process apply only to residential rental projects other than those financed with tax-exempt bonds. Projects financed with certain tax-exempt bonds may be eligible to receive all or some of their LIHTC outside of the State's ceiling. Although these projects need not compete for an award through the competitive process, they must still be evaluated against the Threshold Criteria and the Competitive Scoring Criteria (both as outlined and defined in the Guide), and they must comply with the provisions of this Allocation Plan.

The Guide describes in detail CDA's criteria, requirements, and policies for evaluating, ranking, and selecting projects for LIHTC. This Allocation Plan governs the administration of the Maryland LIHTC Program, including reservations, allocations, and compliance.

The determination of whether a project is eligible to receive an allocation of LIHTC rests solely with CDA and is contingent upon the project owners' compliance with §42 of the Internal Revenue Code and the requirements of the Maryland LIHTC Program, which may be more restrictive than the requirements of §42 of the Internal Revenue Code.

### B.3 Adoption of the Allocation Plan

Before adopting this Allocation Plan, including the Guide, CDA held a public hearing on ~~February 21, 2018~~, 2019, after giving at least fourteen (14) days' notice to the public by means of publication in newspapers of general circulation. Public comments were permitted in writing at the office of CDA any time up to the beginning of the public hearing, and verbal comments were received by CDA at the public hearing. This Allocation Plan, including the Guide, was subsequently submitted to the Governor for approval and was approved by the Governor on ~~March 19, 2018~~, 2019, effective as of that date. ~~The Allocation Plan was amended on August 1, 2018 to comply with changes in the federal Consolidated Appropriations Act of 2018.~~

CDA may amend this Allocation Plan at any time by means of the procedure described above for adoption of the Allocation Plan. This Allocation Plan shall also be amended as necessary to ensure that CDA's LIHTC allocations comply with the requirements of the Internal Revenue Code. The Guide may be amended for non-substantive changes or for changes which do not affect LIHTC without further amendment to this Allocation Plan and without a public hearing, by determination of the Secretary, to the extent necessary to carry out CDA policies.

**All LIHTC reservations, feasibility determinations, and allocations made under prior versions of this Allocation Plan will be honored by CDA. However, compliance monitoring for all projects, regardless of when LIHTC were reserved or allocated, shall be conducted in accordance with and subject to the compliance monitoring fees posted on the DHCD website at: <http://dhcd.maryland.gov/HousingDevelopment/Pages/Fees.aspx>, subject to any future amendments.**

**Applicants for LIHTC should refer to the Internal Revenue Code, and specifically to §42 of the Internal Revenue Code and the regulations promulgated thereunder, for additional requirements**

and definitions applicable to the Maryland LIHTC Program. CDA strongly recommends that applicants for LIHTC consult their tax advisor, legal counsel, accountant, or financial advisor for further details concerning the Maryland LIHTC Program.

CDA is responsible for administering the Maryland LIHTC Program under §42 of the Internal Revenue Code, the Housing and Community Development Article, §4-101 – 4-255 of the Annotated Code of Maryland (the Act), and the Code of Maryland Regulations (COMAR) Title 05, Subtitle 05, Chapter 06. CDA's interpretation of §42 of the Internal Revenue Code, the Act, or COMAR is not binding upon the IRS, and CDA neither represents nor warrants to any project owner, investor, or other program participant how the IRS will interpret or apply any provision of the Internal Revenue Code in any instance.

## **B.4 Administration of the Allocation Plan**

Nothing in this Allocation Plan is intended to impair or limit the rights of CDA with respect to, or to release a project owner from, any of the covenants or conditions contained in any agreement or contract between the project owner and CDA. CDA may take against a project owner any action permitted under any agreement or provision of law that it deems necessary or expedient for failure to perform any such covenant or condition, including limiting or prohibiting participation by a project owner or any of its principals in the Maryland LIHTC Program.

The project owner is responsible for complying with this Allocation Plan and the Guide in effect when the project owner submits to CDA an application for LIHTC. In addition, CDA reserves the right to modify this Allocation Plan or the Guide through the procedures described above and to require the project owner to comply with the modifications, as appropriate in the determination of CDA, unless otherwise prohibited by law.

Copies of this Allocation Plan are available upon written request to CDA at 7800 Harkins Road, Lanham, MD 20706, attention: Tax Credit Program Administrator or on the Department's website at <http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx>.

## **C. Application Process and Fees**

### **C.1 Application Process**

The application process, including provisions for pre- and post-round publication of information, is outlined in Chapter 2 of the Guide.

For a project to be considered for an allocation of LIHTC, CDA must receive a completed application, together with a non-refundable application fee, within the deadline specified in the public notice. All fees are outlined on the DHCD website at: <http://dhcd.maryland.gov/HousingDevelopment/Pages/Fees.aspx>.

To be evaluated during any round of competition (the competition is referred to as "rating and ranking"), projects must meet all of the Threshold Criteria specified in the Guide. These requirements are intended to eliminate projects that do not meet basic Maryland LIHTC Program

requirements and to ensure that LIHTC are reserved for projects that meet the Internal Revenue Code requirements and are both viable and ready to proceed. Projects that do not meet the Threshold Criteria will not be rated and ranked during the competitive rounds. Some of the threshold requirements may be waived at CDA's discretion for compelling reasons that are not inconsistent with the Internal Revenue Code. See Chapter 5 of the Guide for waiver provisions and requirements.

In accordance with Section 2.5 of the Guide, CDA will release information on all Maryland LIHTC awards in a round along with information on waivers granted and any State Bonus Points awarded within the Competitive Scoring Criteria pursuant to Chapter 4 of the Guide.

Projects with 50% or more of their development and acquisition costs financed with the proceeds of tax-exempt bonds may receive LIHTC on the entire qualified LIHTC basis outside the State's annual allocation of tax credits. Projects with less than 50% of their costs financed with the proceeds of tax-exempt bonds may receive LIHTC on the appropriate portion of the Eligible Tax Credit Basis so financed without requiring an allocation.

## **C.2 Acquisition Credits**

For projects receiving acquisition LIHTC for an existing project, CDA may, as a condition for a reservation of LIHTC, require the sponsor to provide a legal or certified public accountant's opinion regarding the project's satisfaction of (or exemption under §42(d)(6)(C) of the Internal Revenue Code from) §42(d)(2)(B)(ii) of the Internal Revenue Code, i.e. the Ten-Year Rule.

## **C.3 Fees**

Fees associated with the LIHTC Program and payment instructions are posted on the DHCD website at: <http://dhcd.maryland.gov/HousingDevelopment/Pages/Fees.aspx>.

# **D. Reservations**

## **D.1 In General**

Applications will be evaluated based on the rating and ranking of the projects using the evaluation criteria set forth in detail in the Guide. Recommendations for reservations of LIHTC will be made by CDA to DHCD's Housing Finance Review Committee (HFRC). After evaluating CDA's recommendations, HFRC will make a final recommendation to the Secretary, who has the authority to make the final decision regarding whether to approve each reservation of LIHTC. After applications have been evaluated against the Threshold Criteria and rated and ranked, the Secretary may approve reservations of LIHTC without recommendations by HFRC in emergencies or when urgent action is required. If, in any round of competition, CDA determines in its sole discretion that the submitted projects have scored poorly under the Competitive Scoring Criteria, CDA reserves the right not to make any recommendations for reservations of LIHTC at that time and to evaluate the applications in a subsequent round.

Following approval, sponsors will receive either a LIHTC reservation letter or an allocation, depending on the timing of the funding round. A reservation letter is a conditional commitment to reserve LIHTC for the project. A reservation or allocation is for only the amount of LIHTC, in the sole determination of DHCD, necessary for the financial feasibility of the project and its viability as a qualified low-income housing project. Each reservation is further subject to a number of conditions. These conditions include the submission of evidence of timely completion of the project and documentation certifying compliance with both State and federal requirements. Owners are also required to verify project costs as a condition of receiving a Carryover Allocation and again when the project is placed in service. Reservations may be cancelled and projects withdrawn from processing for the reasons set forth in the Guide under Section 6.1.1.

In general, for projects competing in any round of rating and ranking with awards made before July 1 of any calendar year, following recommendation by HFRC and approval by the Secretary, CDA will issue a reservation letter to the sponsor.

For projects competing in any round of rating and ranking with LIHTC awards made on or after July 1, allocations, not reservations, may be issued by CDA after recommendation by HFRC and approval by the Secretary. See [Section E](#) - Allocations, for more information.

In the event that reservations of LIHTC are approved or denied on any basis other than an application's evaluation against the Threshold Criteria and its rating and ranking under the Competitive Scoring Criteria, CDA will include in the application file, and make available upon public request, a written explanation for the approval or denial of LIHTC, as applicable.

## **D.2 Locally Issued Bonds**

For projects funded by tax-exempt bonds issued by local jurisdictions which request 4% LIHTC, CDA will not perform the feasibility determination on behalf of the local jurisdiction unless the issuing local jurisdiction submits a written request to CDA. A complete copy of the CDA Application Submission Package must be submitted to request 4% LIHTC for projects funded by tax-exempt bonds issued by local jurisdictions.

## **D.3 Forward Reservations**

Under certain conditions a project may be eligible to receive a reservation of LIHTC from the State's ceiling for future years (Forward Reservation). To receive a Forward Reservation, project sponsors must agree to comply with all conditions imposed by CDA and the IRS. The following types of projects may receive Forward Reservations from a future year's LIHTC ceiling:

### **Projects Unable to Meet Deadlines.**

CDA may approve a Forward Reservation for projects that have already received reservation letters but are not able to be placed in service in the year of their reservation or are unable to meet the 10% expenditure test as provided in §42(h)(1)(E) of the Internal Revenue Code. Such projects will be considered for a Forward Reservation only if LIHTC reserved can be allocated to other projects or can be carried forward for allocation in a future year. To be considered for

an extension of these deadlines, sponsors must remit the non-refundable extension of reservation fee. (See [Section C.3 – Fees.](#))

**Insufficient Tax Credits.**

CDA may approve a Forward Reservation for projects that ranked high enough in a round of competition for an award of LIHTC when there is insufficient remaining LIHTC that can be allocated by CDA in the current year.

**Multiple-Year Reservations.**

CDA may approve a Forward Reservation when projects or reservations will be appropriately staged over two (2) or more years. CDA will determine if the sponsor's request for LIHTC is large enough to limit the available resources in the current or future years for other projects that otherwise qualify for a reservation.

## **D.4 Increase of Reservations**

CDA may approve increases in the amount of LIHTC reserved for projects of up to 10% of the amount previously approved by the Secretary. Such increases may be approved only from the time the reservation letter is issued until the time a Carryover Allocation is issued. Projects whose LIHTC are increased after approval by the Secretary need not be reevaluated against the Threshold and Competitive Scoring Criteria. The aggregate increases approved by CDA may not exceed 10% of the State's LIHTC ceiling for the year of the increase.

## **D.5 Tax Credit Rates**

**Competitively Allocated Tax Credits.**

It is not necessary to file a Binding Agreement and Election Statement for new construction or substantially rehabilitated projects which are placed in service after January 1, 2015. For these projects, CDA will assume a 9% applicable credit percentage. However, the use of the 9% rate will not change the amount of credits reserved for the project. At Carryover Allocation, CDA will elect to either use the 9% applicable percentage and allocate fewer credits than the amount for which the project qualifies (i.e., allocate the reserved amount) or to use a tax credit rate lower than 9% in order to establish the amount of credits for which the project qualifies at an amount equal to the reserved amount.

The Binding Agreement and Election Statement must be submitted if the sponsor wishes to elect (or "lock in") the applicable percentage for the 4% acquisition credit rate for existing buildings. A sponsor may elect (or lock in) the applicable percentage any time from the month in which the reservation letter is fully executed by the project sponsor and CDA, up to the month in which the Carryover Allocation is issued by CDA to the project owner. The statement must be notarized and filed with CDA no later than the 25<sup>th</sup> day of the month in which the election under §42(b)(1)(A)(ii)(I) of the Internal Revenue Code for the applicable percentage is taken.

In accordance with the Internal Revenue Code, if a sponsor does not file a Binding Agreement and Election Statement to lock in the applicable 4% credit rate for the acquisition of existing buildings,

the applicable percentage will be determined by the month each building in the project is placed in service.

**Non-Competitive Tax-Exempt Bond Financed Projects.**

The “Low-Income Housing Credit - Election under §42(b)(2)(A)(ii)(II) to use as the Applicable Percentage the Appropriate Percentage for the Month in which Tax-Exempt Obligations are Issued” (i.e., The LIHTC Election under §42) is used to lock-in the credit rate for non-competitive tax-exempt bond financed projects. The LIHTC Election under §42 may be filed with CDA within the month the bonds are sold or in the first five (5) days of the following month. The applicable percentage elected is limited to the month in which the bonds are sold.

For projects financed by tax-exempt bonds issued by a local jurisdiction, the sponsor must have the issuer certify the information included in the LIHTC Election under §42 prior to the issuance of the bonds and pursuant to §1.42-8(b)(4)(I) of the IRS Regulations. The LIHTC Election under §42 must be filed with CDA within the month the bonds are sold or in the first five (5) days of the following month. As with CDA bonds, the applicable LIHTC rate elected is limited to the month in which the bonds are sold. In accordance with the Internal Revenue Code, if a sponsor does not file the LIHTC Election under §42, the applicable percentage will be determined by the month each building in the project is placed in service.

**D.6 Cancellation of Reservation**

Each reservation of LIHTC will be based on the representations made by the sponsor about the qualification of their project under the Competitive Scoring Criteria set forth in this Allocation Plan and Guide. As the project is completed and placed in service, the sponsor must show that all of the representations and undertakings made in the application and all Competitive Scoring Criteria are and will continue to be fulfilled to CDA’s satisfaction. Failure of a sponsor to show that all representations and undertakings were carried out and all project selection criteria continue to be met may result in cancellation of a reservation. Substantial delays in construction of a project may also result in cancellation of a reservation. As required by federal law, sponsors must certify, at specific points in the process, as to the amount of all federal, State and local subsidies included or expected to be included in their projects.

Failure to submit the certification and supporting documentation will result in cancellation of the reservation. Any LIHTC available from canceled reservations will be awarded to other projects or carried forward in Maryland’s unallocated pool.

**D.7 Limitations on Reservations**

Based on the demand for LIHTC and on project rankings, CDA may in its sole discretion limit LIHTC reserved for any one (1) sponsor or for projects in any specific jurisdiction. CDA may also, in its sole discretion, substitute CDA multifamily loan funds for the estimated LIHTC equity that was available but not reserved for the project.

## E. Allocations

### E.1 In General

As required by §42 of the Internal Revenue Code, sponsors must either place the project in service in the year of reservation or qualify for a binding commitment to carry over LIHTC for up to two (2) additional years (a Carryover Allocation). Under §42(h)(1)(E)(ii) of the Internal Revenue Code, to qualify for a Carryover Allocation, a sponsor must (a) incur costs in excess of 10% of the reasonably expected basis of the project (the 10% Expenditure Test) by the date which is twelve (12) months after the date the Carryover Allocation is made and (b) place the project in service by the end of the second year following the year of the Carryover Allocation. Failure to meet these requirements will result in the loss of the LIHTC for the project. **The actual date for 10% Expenditure Test compliance will be set in the reservation document based on the schedule supplied by the sponsor in the project application. The project sponsor will only be allowed to re-set the date for satisfaction of the 10% Expenditure Test one time and only within twenty-four (24) hours of the Kick-Off Meeting.**

### E.2 Limitations on Eligible Basis

CDA will exercise its discretion under §42(d)(5)(B)(v) and §42(m)(2)(A) and (B) of the Internal Revenue Code to limit eligible basis to an amount it determines to be reasonable and necessary for the long term viability of the project as affordable housing. This is not a limitation on the amount of eligible basis allowable to a project under the Internal Revenue Code, and a project whose eligible basis allowable under the Internal Revenue Code exceeds the feasibility limit imposed by CDA may still be eligible for LIHTC. However, the maximum amount of LIHTC allocated to the project by CDA will be calculated based on the eligible basis limit applicable to that project as determined by the cost limitations and other restrictions contained in the Guide.

### E.3 State 30% Basis Boost

**All family projects located within Communities of Opportunity that request competitive tax credits qualify for the State 30% Basis Boost without prior CDA approval.** For all other projects and as authorized by and to the extent permitted by §42(d)(5)(B)(v) of the Internal Revenue Code, CDA may increase the eligible basis of projects by up to 30% (i.e., the State Basis Boost) if CDA determines that the project or a building in the project needs the State Basis Boost to be financially feasible.

CDA may make a determination that a project is eligible for the State Basis Boost on its own initiative at any time, based upon review of the project's sources and uses. Limitations on the maximum amount of Rental Housing Financing Programs (RHFP) funds and LIHTC continue to apply to projects receiving a Basis Boost under this section, unless CDA uses its discretion to adjust the amount of RHFP funds and LIHTC to balance the demand for resources as described below in [Section E.5](#).

Projects receiving a Basis Boost because of location in a Qualified Census Tract (QCT) or Difficult Development Area (DDA) are not also eligible to receive the State Basis Boost.

Projects which receive competitively allocated credits are eligible for the State Basis Boost. The Housing Economic Recovery Act of 2008 (HERA) does not permit the State Basis Boost for projects that receive credits outside the State's annual allocation of tax credits. (i.e., tax- exempt bond financed projects are not eligible for the State Basis Boost).

#### **E.4 Financing with Other Programs**

Financing from the Shelter and Transitional Housing Facilities Grant Program or Partnership Rental Housing Program may not be included in a project's eligible basis if it is funded from GO Bonds and if competitively allocated LIHTC are used. Please contact CDA before submitting an application for LIHTC for projects involving these programs.

#### **E.5 Balancing RHFP Funds and Tax Credits**

To balance the demand for RHFP funds and LIHTC, CDA reserves the right to adjust the amount of LIHTC as well as RHFP funds requested in an application. CDA also may substitute other sources of funds for those requested.

#### **E.6 Request for a Carryover Allocation**

Unless ready to be placed in service, a project with a reservation of LIHTC from the current calendar year's LIHTC ceiling will receive a Carryover Allocation from CDA by December of that year. To qualify for a Carryover Allocation, the sponsor holding a current year reservation must provide an updated project budget on CDA Form 202 upon request by CDA.

#### **E.7 The 10% Expenditure Test**

CDA requires sponsors to complete an Affidavit of Utilization of a Reservation (the Affidavit) no later than twelve (12) months from the date of the Carryover Allocation. The Affidavit states the sponsor has incurred costs in excess of 10% of the reasonably expected basis of the project. If a sponsor has not met the 10% Expenditure Test within twelve (12) months from the date of the Carryover Allocation, the Carryover Allocation will be canceled. To be considered for an extension of the 10% Expenditure Test deadline, sponsors must submit an Affidavit of Utilization of a Reservation form indicating the extension request and the nonrefundable extension fee for each month's extension at the time of the request. (See [Section C.3](#) – Fees.) Requests for extensions must be approved by the Tax Credit Program Administrator for CDA.

To meet the requirements of the certification of expenditures to date or the 10% Expenditure Test described above, the sponsor must submit a third-party attorney's or certified public accountant's certification that is acceptable to CDA. The certification must include an itemization of the project's reasonably expected basis and the costs incurred. Alternatively, the sponsor may prepare and submit a certification and itemization of the project's reasonably expected basis and the costs incurred, along with supporting documentation acceptable to CDA.

Failure to submit the certification and supporting documentation will result in cancellation of the reservation or allocation. Any LIHTC available from canceled reservations or allocations will be awarded to other projects or carried forward in Maryland's unallocated pool.

**While CDA is required to verify that a project has satisfied this 10% Expenditure Test, CDA makes no determination of the test's sufficiency with respect to the Internal Revenue Code or the IRS. As with all other matters under §42 of the Internal Revenue Code, sponsors and investors must rely on their own professionals to determine whether the 10% Expenditure Test has been satisfied.**

### **E.8 Placed in Service Evaluation/IRS Form(s) 8609**

To keep Carryover Allocations and receive IRS Form(s) 8609 (as discussed below), projects must be placed in service by the end of the second year following the date of the Carryover Allocation. Once projects are placed in service, the sponsor must request IRS Form(s) 8609 from CDA no later than ninety (90) calendar days after the first year the credit is claimed for the first building receiving an allocation. If sponsors elect to defer the first year of the credit period until the succeeding tax year, CDA must be notified in writing no later than ninety (90) calendar days after the original required placed in service deadline for the project.

CDA will prepare and issue IRS Form(s) 8609, certifying the final amount of LIHTC allocated to each building in a project, at the time the buildings are placed in service. The form is needed for the sponsor to claim LIHTC on the project. Before the IRS Form(s) 8609 is issued and no later than three (3) months after the close of the first year in which LIHTC are taken, CDA must receive from the sponsor the documentation specified below, as well as any additional documentation requested. As required by the Internal Revenue Code, CDA will undertake a final evaluation of each project to determine the amount of LIHTC needed to make the project financially feasible. While CDA will use its best efforts to complete this review as soon as possible, sponsors are advised that the review process may take as long as ninety (90) days to complete. In addition, the IRS Form(s) 8609 will not be issued until the Final Determination of Loan Proceeds has been fully executed for those projects which have other CDA financing. Only the amount of LIHTC needed for financial feasibility and viability of the project as a qualified low income housing project throughout the fifteen (15) year compliance period will be allowed. Any additional LIHTC previously allocated to the project will be returned to CDA.

- **Date Project Placed in Service.** In order to demonstrate that a project has been placed in service, the sponsor must provide use and occupancy permits for each building in the project. If the project involves rehabilitation, or the local jurisdiction does not issue use and occupancy permits, the sponsor may provide other evidence acceptable to CDA for the month the project was placed in service. The settlement statement must be provided to document the acquisition placed in service date.
- **Cost Certification.** Each sponsor must submit a cost certification or other statement of costs, certified by the sponsor, detailing the total sources and uses of funds for the project and containing a statement of the project's eligible basis for each building in the project. The cost certification must be prepared by a third-party qualified professional. For projects financed by the Rural Housing Service of Rural Development, an agency of the U.S. Department of Agriculture, or insured by the Federal Housing Administration (FHA), the federal cost certification may be submitted if it includes the total sources and uses of funds for the project.

- **Limited Partnership/LLC Operating Agreement.** Each sponsor must provide to CDA a copy of the most recent fully-executed limited partnership agreement or limited liability company operating agreement, including all amendments, attachments and exhibits.
- **Extended Low-Income Housing Covenant (LIHTC Covenant).** Each sponsor must submit a copy of the LIHTC Covenant in the form required by CDA, with evidence that it has been recorded. CDA may require as condition of release of the IRS Form(s) 8609 that projects with more than a single building submit a recorded amendment to the LIHTC Covenant specifying the actual applicable fraction for each building in the project.
- **Evidence of full payment of all LIHTC Fees.**
- **Evidence of registration of the project on [www.mdhousingsearch.org](http://www.mdhousingsearch.org).**
- **An executed Final Determination of Loan Proceeds, if applicable.**
- **Satisfaction of all unresolved compliance issues.**

The above list is subject to change, and sponsors must obtain from CDA the most current list of required documents pertaining to each individual project for proper and timely processing of IRS Form(s) 8609.

If the required documentation described above is not submitted by the sponsor within the required timeframe, CDA may cancel all or a portion of LIHTC allocated to the project as provided by the Internal Revenue Code and the following section of this Allocation Plan. If the project owner elects to defer the first year of the credit period, CDA must be notified by the sponsor in writing no later than the initial placed in service deadline provided by the Carryover Allocation.

Prior to issuance of IRS Form(s) 8609, CDA will undertake a final evaluation of each project to determine the amount of LIHTC needed to make the project financially feasible. Only the amount needed for financial feasibility and viability as a qualified low-income housing project throughout the fifteen (15) year compliance period will be allocated. Any excess LIHTC previously allocated to the project will be recaptured.

## **E.9 Allocation Amendment**

Sponsors requesting amendments to the IRS Form(s) 8609 already issued by CDA where the requested amendment is not the result of an administrative error by CDA must pay a non-refundable Allocation Amendment fee. (See [Section C.3](#) – Fees.)

## **E.10 Cancellation of Allocation**

Each allocation of LIHTC will be based on the representations made by the sponsor about the qualification of their project under the Competitive Scoring Criteria set forth in the Guide. As the project is completed and placed in service, the sponsor must show that all of the representations

and undertakings made in the application and all Competitive Scoring Criteria are and will continue to be fulfilled to CDA's satisfaction. Failure of a sponsor to show that all representations and undertakings were carried out and all project selection criteria continue to be met may result in cancellation of an allocation. Substantial delays in completing a project may also result in cancellation of an allocation. Sponsors must certify, at each point in the process, as to the amount of all federal, State, and local subsidies included or expected to be included in their project.

Failure to submit the certification and supporting documentation will result in cancellation of the allocation. In general, any LIHTC available from canceled allocations will be awarded to other projects or carried forward in Maryland's unallocated pool.

Notwithstanding any other provision of this Allocation Plan, where (i) a project has not been placed in service by the date required or it is apparent that a project will not be placed in service by the date required, (ii) such failure is due to circumstances beyond the sponsor's control, and (iii) the sponsor has returned its Carryover Allocation in the last quarter of the calendar year or, at CDA's sole discretion, an earlier time, CDA may reserve LIHTC in an amount not to exceed the amount of LIHTC returned and may allocate such LIHTC to the sponsor from the current or future year's LIHTC ceiling.

In order to effect an allocation under such conditions, the following conditions must be met: (i) prior to returning the allocation, the sponsor must provide written notice to the CDA Tax Credit Program Administrator via certified mail describing (a) the circumstances causing the delay, (b) all remedial measures attempted by the sponsor to mitigate the delay, and (c) any other pertinent information relating to the delay; and (ii) the CDA Director, any CDA Deputy Director, or the Director, Multifamily Housing Programs must find and determine that (a) the delay was caused by circumstances beyond the sponsor's control, (b) the sponsor exercised due diligence in seeking to resolve the circumstances causing the delay, (c) the sponsor's project in all respects, except the time placed in service, still meets the conditions upon which LIHTC were originally allocated, and (d) the project is still desirable in terms of meeting affordable housing needs. The written notice from the sponsor seeking to return LIHTC and determination of the CDA Director, any CDA Deputy Director, or the Director, Multifamily Housing Programs described above may be executed in advance of the actual return of LIHTC. For example, such notice and determination could occur prior to initial closing of a DHCD loan, and the determination could specify the actual timeframe for return of the credits to the State at a future date.

## F. Set-Asides

### F.1 Non-Profit Set-Aside

As required by §42(h)(5)(A) of the Internal Revenue Code a minimum of 10% of the total LIHTC available for allocation must be set aside annually for projects involving qualified nonprofit organizations (the Non-Profit Set-Aside). CDA agrees to satisfy this federal requirement first by making awards, consistent with the scores determined in accordance with the Guide, to the top-rated projects in which 100% of the controlling interest is held by nonprofit organizations and next to the top-rated projects in which 51% or more of the controlling interest is held by nonprofit

organizations. If there are not enough such projects in a competitive round to meet the federal requirement, CDA will include the highest scoring projects in which the controlling interest is held by a nonprofit/for-profit joint venture to meet the Non-Profit Set-Aside. Additional set-aside categories and amounts may be established periodically by CDA, by amendment to this Allocation Plan, to address particular needs.

## **F.2 Other Permanent Supportive Housing Set-Asides**

In addition to the required Non-Profit Set-Aside, ~~the Department~~CDA will establish a set-aside of up to \$1.5 million of ~~9% tax credits competitively allocated LIHTC~~ in the 2019 Competitive Funding Round to fund one (1) Permanent Supportive Housing (PSH) project (the “PSH Set-Aside”). ~~Tax Credits~~LIHTC from the PSH Set-Aside will be awarded to the ~~highest scoring~~ project that qualifies as a PSH project and receives the highest cumulative Permanent Supportive Housing Set-Aside Score (as detailed below), ~~regardless of the application’s overall ranking in the Competitive Funding Round. PSH applications may also be scored and receive an allocation of credits from the general pool.~~If an application for the PSH Set-Aside does not receive an allocation from the PSH Set-Aside, the application will then be reviewed in accordance with the requirements for all other applications in the Competitive Funding Round. If no eligible applications are received or the full amount of the PSH Set-Aside is not awarded in the 2019 Competitive Funding Round, the PSH Set-Aside shall revert to the general pool in accordance with Section F.3 below.

### Permanent Supportive Housing Criteria:

To be eligible for an allocation of ~~credits~~LIHTC from the PSH Set-Aside, the project must comply with the following minimum criteria.

1. The project must meet all threshold requirements as detailed in the Guide.
- ~~1-2.~~ No more than 50% or more of all units may ~~ayust~~ be identified as PSH units meaning that the units are affordable at 30% of AMI and serve residents eligible for supportive services.
3. The project must achieve minimum scoring under the Guide in the following categories:
  - a. 4.1 – Capacity of Development Team – minimum score of 40 of 74 possible points;
  - b. 4.3 – Transit Oriented Development (TOD) – minimum score of 4 of 8 possible points; and
  - c. 4.6 – Development Quality Standards – minimum score of 25 of 31 possible points.
- ~~2-4.~~ The project must have a commitment at the time of application for project-based rental subsidy with a term of at least fifteen (15) years for a minimum of 50% of the PSH units. The rent subsidy must cover the difference between 30% of the resident’s income and the fair market rent for the unit. Project-based rental assistance may be provided by a local public housing authority, USDA, or other such project-based assistance.
- ~~3-5.~~ At the time of application, the project must provide a letter of support from the applicable Continuum of Care (CoC). The letter of support must outline the relationship the project will have with the CoC regarding the coordinated entry system, referral services, supportive services, and data sharing.
- ~~4-6.~~ The project must provide a Supportive Services Plan (SSP) acceptable to the DepartmentCDA. The SSP must be unique to the project, provide services s on site, be accepted by the applicable CoC, and address the following:

**MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

- a. Populations to be served;
- b. Sources of funding for all supportive services and how the supportive services will be sustained over the 40-year extended use period;
- ~~b.~~c. The tenant referral and selection process that evidences low barriers to access and entry for the PSH units;
- ~~c.~~d. Formal and informal methods that will be used to evaluate the success of the SSP in meeting the individual needs of the residents, addressing ~~the~~ overall issues of homelessness and how this information will be conveyed to ~~the Department~~CDA; and
- ~~d.~~e. Specific services to be provided, including ~~all of~~ the following
  - i. Identification of partnerships with qualified service-provider agencies;
  - ii. Methods to assess resident needs and develop a plan for service delivery;
  - iii. How transit will be provided to off-site services and referral entities;
  - iv. Memorandum of understanding with all applicable ~~local~~ service providers;
  - v. Methods to monitor and evaluate service delivery and outcomes; and
  - vi. Methods to provide assistance in applying for Medicaid and other benefits to ensure the needs of residents are met.

Permanent Supportive Housing Set-Aside Scoring:

All applications for the PSH Set-Aside that meet the minimum criteria above will be reviewed and assigned a PSH Score as follows (148 maximum points):

- Guide Section 4.1 – Capacity of Development Team (74 maximum points)
- Guide Section 4.3 – Transit Oriented Development (TOD) (8 maximum points)
- Guide Section 4.6 – Development Quality (31 maximum points)
- PSH Set-Aside Units (35 maximum points):

<u>Points</u>	<u># of Units</u>
<u>0</u>	<u>&lt;20</u>
<u>5</u>	<u>20 – 30</u>
<u>10</u>	<u>30 – 40</u>
<u>15</u>	<u>&gt;40</u>

<u>Points</u>	<u>% of Units</u>
<u>0</u>	<u>&lt;25</u>
<u>5</u>	<u>20 – 30</u>
<u>10</u>	<u>30 – 40</u>
<u>15</u>	<u>40 – 45</u>
<u>20</u>	<u>45 – 50</u>

The application which receives the highest PSH Score will receive an allocation of LIHTC from the PSH Set-Aside.

Note: All projects competing for the PSH Set-Aside should submit a full application. Projects will first be ranked according to the Permanent Supportive Housing Set-Aside Scoring detailed above. In the case of a tie, the PSH Set-Aside LIHTC will be allocated to the project with the highest overall score in the competitive scoring process outlined in the Guide. Projects that do not receive the PSH Set-Aside will be ranked according to the Guide for consideration in the general pool.

~~A project funded from the PSH Set-Aside must achieve minimum scoring in the following categories:~~

~~4.1—Capacity of Development Team—minimum score of 40 of 74 possible points.~~

~~4.3—Transit Oriented Development (TOD)—minimum score of 4 of 8 possible points.~~

~~4.6—Development Quality Standards—minimum score of 25 of 31 possible points.~~

### **F.3 Other Set-Asides**

Other than the required Non-Profit Set-Aside, set-aside amounts shall have an expiration date established by CDA, at which time uncommitted LIHTC will revert to the general pool of LIHTC available to all qualified projects. ~~There are currently no other set-asides other than the Non-Profit Set-Aside detailed in Section F.1 above.~~

## **G. Allocation Criteria**

CDA has developed allocation criteria for use in selecting projects for LIHTC allocations. The allocation criteria include the following in accordance with §42(m)(2)(C) of the Internal Revenue Code: project location; housing needs characteristics; project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan; sponsor characteristics; tenant populations with special housing needs; public housing waiting lists; tenant populations of individuals with children; projects intended for eventual tenant ownership; the energy efficiency of the project; and the historic nature of the project. Additional allocation criteria include: serving the lowest income residents; serving qualified residents for the longest periods; location in qualified census tracts; and participation of local tax-exempt organizations. **The allocation criteria are set forth in detail in the Guide.**

The application material (the Multifamily Rental Financing Application Submission Package), which may be revised from time to time, requests information concerning how the project meets the allocation criteria. This information will be used by CDA to assign points to projects based on the allocation criteria. The order of priority for reserving or allocating available LIHTC to projects will be determined by rating and ranking projects in accordance with the number of points received.

The allocation criteria reflect requirements of §42 of the Internal Revenue Code and other relevant federal laws, State housing needs, and DHCD policies. While the criteria set forth in this Allocation Plan and the Guide will be used to evaluate whether projects meet DHCD's housing objectives, projects will also be evaluated on their financial feasibility and viability as low-income

housing projects. The determination that a project will receive an allocation of LIHTC rests solely with CDA.

The Guide includes information regarding CDA's criteria, requirements, and policies for administering the Maryland LIHTC Program. **The Guide incorporates many of the federal requirements for LIHTC but is not intended to replace or fully represent the LIHTC requirements under §42 of the Internal Revenue Code. If there is a conflict between a requirement of this Allocation Plan or the Guide and the requirements of §42 of the Internal Revenue Code, the more restrictive requirement shall apply in the sole discretion of CDA.**

## H. Project Monitoring

### H.1 Introduction

The Internal Revenue Code requires CDA to include in its Allocation Plan a procedure that CDA will follow in monitoring LIHTC projects for compliance with the provisions of §42 of the Internal Revenue Code and in notifying the IRS of any noncompliance of which CDA becomes aware. Treasury Regulation §1.42-5 sets forth minimum standards that the monitoring procedures must meet in order for this Allocation Plan to meet Code requirements. Compliance with the requirements of §42 is the responsibility of the LIHTC project owner. CDA's obligation to monitor for compliance with the requirements of §42 does not make CDA liable for a project owner's noncompliance.

CDA adopts the following requirements for evaluating compliance with §42 of the Internal Revenue Code and the Maryland LIHTC Program. These minimum standards may be modified or amended in CDA's sole discretion by amendment to this Allocation Plan.

### H.2 Recordkeeping and Record Retention

#### **Recordkeeping.**

The project owner must keep records for each qualified low-income building in the project that reflect the following for each year throughout the term of the Extended Use Period in effect for that project:

- (i) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- (ii) The percentage of residential rental units in the building that are low-income units;
- (iii) The rent charged on each residential rental unit in the building (including any utility allowances);
- (iv) The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under §42(g)(2) of the Internal Revenue Code;

- (v) The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
- (vi) The annual income certification of each low-income tenant per unit unless exempt from annual income recertification for a building occupied entirely by low-income tenants (See [Section H.4](#) Review (vi));
- (vii) Documentation to support each low-income resident's income certification, unless exempt (See [Section H.4](#) Review (vi));
- (viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- (ix) The character and use of the nonresidential portion of the building included in the building's eligible basis under §42(d) of the Internal Revenue Code.

**Record Retention.**

The project owner must retain the records described above for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period (defined in Code §42(f)(1)), however, must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period (defined in Code §42(i)(1)) of the building.

**Building Inspection Record Retention.**

The project owner must retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit for CDA's inspection. Retention of the original violation reports or notices is not required after CDA reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

### **H.3 HUD Reporting Requirements**

Pursuant to HERA, specifically at 42 USC Section 1437z-8, CDA is obligated to furnish to the U.S. Department of Housing and Urban Development (HUD), no less than annually, the following information about the tenants of each project that receives LIHTC: race, ethnicity, family composition, age, income, use of rental assistance under Section 8(o) of the United States Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments. Accordingly, the project owner shall provide such information to CDA in the form and at the times required by CDA in order to permit CDA to comply with its obligations.

### **H.4 Certification and Review**

**Certification.**

The project owner must certify to CDA at least annually, in a form acceptable to CDA and under penalty of perjury, that for the preceding twelve (12) month period the following conditions were satisfied:

**MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

- (i) The project met the requirements of:
  - a. The 20@50 Set-Aside under §42(g)(1)(A) of the Internal Revenue Code, the 40@60 Set-Aside under §42(g)(1)(B) of the Internal Revenue Code, or the Income Averaging Set-Aside under §42(g)(1)(C), whichever minimum set-aside test was applicable to the project; and
  - b. If applicable to the project, the 15-40 Test under §42(g)(4) and §42(d)(4)(B) of the Internal Revenue Code for “deep rent skewed” projects,
- (ii) There was no change in the applicable fraction (as defined in §42(c)(1)(B) of the Internal Revenue Code) of any building in the project, or if there was a change, the nature of the change;
- (iii) The project owner has received an annual income certification from each low-income resident, and documentation to support that certification, unless exempt (See part (vi) of Review below);
- (iv) Each low-income unit in the project was rent-restricted under §42(g)(2) of the Internal Revenue Code;
- (v) All units in the project were for use by the general public, including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. For these purposes, a “finding of discrimination” includes an adverse final decision by the Secretary of HUD under 24 CFR 180.680, an adverse final decision by a substantially equivalent State or local fair housing agency under 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;
- (vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards). The State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If the responsible governmental unit issued a violation report or notice, the project owner must attach to the annual certification submitted to CDA a statement summarizing the violation report or notice or a copy of the violation report or notice. In addition, the project owner must state whether the violation has been corrected;
- (vii) There was no change in the eligible basis (as defined in §42(d) of the Internal Revenue Code) of any building in the project, or if there was a change, the nature of the change;
- (viii) All tenant facilities included in the eligible basis under §42(d) of the Internal Revenue Code of any building in the project, such as swimming pools, other

**MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

- (ix) If a low-income unit in the project became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;
- (x) If the income of tenants of a low-income unit in the project increased above the limit allowed in §42(g)(2)(D)(ii) of the Internal Revenue Code, the next available unit of comparable or smaller size in the building was or will be rented to tenants having a qualifying income;
- (xi) An extended low-income housing commitment as described in §42(h)(6) of the Internal Revenue Code was in effect, including the requirement under §42(h)(6)(B)(iv) of the Internal Revenue Code that a project owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937;
- (xii) The project owner has complied with §42(h)(6)(E)(ii)(I) and has not evicted or terminated the tenancy of an existing tenant of any low-income unit other than for good cause;
- (xiii) All low-income units in the project were used on a non-transient basis (except for transitional housing for persons experiencing homelessness provided under §42(i)(3)(B)(iii) of the Internal Revenue Code or single-room occupancy units rented on a month-by-month basis under §42(i)(3)(B)(iv) of the Internal Revenue Code).

**Review.**

- (i) CDA will conduct on-site inspections of all buildings in all low-income housing projects by the end of the second calendar year following the year the last building in the project is placed in service. In addition, CDA will inspect at least 20% of the project's low-income units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.
- (ii) At least once every three (3) years throughout the Extended Use Period, CDA will conduct on-site inspections of all buildings in all low-income housing projects and, for the minimum number of low income units as required by the Treasury Regulation 1.45-5T and Rev. Proc. 2016-15, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.
- (iii) CDA will randomly select which low-income units and tenant records are to be reviewed, and CDA may select different units for on-site inspections and for the income certification review. The review of tenant records may be undertaken wherever the

project owner maintains or stores the records (either on-site or off-site). The units and tenant records to be inspected and reviewed will be chosen in a manner that will not give project owners of low-income housing projects advance notice that unit and tenant records for a particular year will or will not be inspected and reviewed. However, CDA may give a project owner reasonable notice (as defined in Treasury Regulation 1.45-5T) that an inspection of the building and low-income units or tenant record review will occur so that the project owner may notify tenants of the inspection or assemble tenant records for review.

- (iv) If CDA elects to use the HUD REAC inspection protocol, CDA may follow the REAC requirements in lieu of the above inspection and certification requirements, subject to the conditions in Treasury Regulation 1.45-5T and Rev. Proc. 2016-15.
- (v) At the sole discretion of CDA, the review of annual certifications may be waived for buildings of which 50% or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of tax-exempt bonds, if CDA has entered into an agreement with the tax-exempt bond issuer that requires the issuer to provide information concerning the income and rent of the tenants in the building. At its discretion, CDA may assume the accuracy of the information provided by the tax-exempt bond issuer without verification or seek such additional verification as it deems appropriate. CDA will review the information and determine that the income limitation and rent restriction of §42(g)(1) and (2) of the Internal Revenue Code are met. If the information is not sufficient for CDA to make this determination, CDA will request the necessary additional rent and income information from the project owner. CDA will notify the project owner in writing of the results of its review.
- (vi) The Internal Revenue Code allows an exemption for buildings with 100% LIHTC units from the annual tenant recertification requirements set forth in §42(g)(8)(B), 1.42-5(b)(1)(vi) and (vii), and 1.42-5(c)(1)(iii) of the Internal Revenue Code, but allows states to set more stringent standards. CDA will administer the annual tenant recertification requirement exemption as follows:
  - This exemption will not automatically apply to projects with the following financing or funding sources: Section 8 Project-Based Rental Assistance Program, Rural Housing Service Program, and/or the Maryland Partnership Rental Housing Program. For these projects, the project owner should contact the funding source for its current requirements and contact CDA in order to apply for the exemption.
  - Effective January 1, 2009, exempt projects are those meeting the following requirements: 1) 100% of the units in the project are LIHTC units; 2) twenty-four (24) months have passed since the end of the calendar year when the last building in the project was placed in service so that at a minimum all initial households in the project have been recertified at least once; 3) CDA's first on-site physical inspection and file review process has been completed

satisfactorily; and 4) the project has no outstanding or uncorrected issues of non-compliance.

- Once a project has met the above requirements, the project owner will not be required to keep records that show an annual income recertification of all the low-income tenants in the building who have previously had their annual income verified, documented, and certified through the initial certification and the first annual recertification. However, the project owner must obtain from each household an annual self-declaration of income, which will not be required to be verified and which must be maintained in the project tenant files.
- This exemption approved under this section remains in effect until the end of the fifteen (15) year compliance period. The recertification exemption will not prevent a project owner from having to produce documentation to verify the project owner's compliance with §42 of the Internal Revenue Code upon examination of the project owner's federal income tax return. The project owner must keep records and documentation that show the income of tenants upon initial occupancy of any residential unit in the building. Obtaining the exemption will also not prevent a project owner from having to satisfy the requirements of the compliance monitoring procedures adopted by CDA for compliance with §42 of the Internal Revenue Code. If the IRS or CDA determines that a project owner has violated §42 of the Internal Revenue Code in a manner that is sufficiently serious to warrant revocation, CDA may revoke the exemption.

(vii) A copy of the executed IRS Form(s) 8609, including Schedule A, for the project must accompany the submission of the owner's first year annual certification. CDA will separately report its compliance monitoring findings, if applicable, annually to the IRS on Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition."

## H.5 Inspection

- (i) CDA has the right to perform an on-site inspection of any low-income housing project throughout the Extended Use Period applicable to the buildings in the project. This inspection provision is separate from any review of low-income certifications, supporting documents, and rent records.
- (ii) **Inspection Standard.**  
For the on-site inspections of buildings and low-income units required above, CDA will review any local health, safety, or building code violations reports or notices retained by the project owner and will determine:
  - a. Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

- b. Whether the buildings and units satisfy, as determined by CDA, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under §42 of the Internal Revenue Code must continue to satisfy these codes and, if CDA becomes aware of any violation of these codes, CDA will report the violation to the IRS. However, provided CDA determines by inspection that the HUD standards are met, CDA is not required to determine by inspection whether the project meets local health, safety, and building codes.

## H.6 Notification of Non-Compliance

### Notice to Project Owner.

CDA will provide prompt written notice to the project owner of a low-income housing project if it does not receive the required annual certifications; does not receive all compliance monitoring fees when due; does not receive for compliance review any requested tenant income certifications, supporting documentation, or rent records; or discovers by inspection, review, or in some other manner that the project is not in compliance with the provisions of §42 or the Maryland LIHTC Program. Each notice will specify a period (the Correction Period), not to exceed ninety (90) days from the date of the notice, within which the project owner must supply any missing certifications and bring the project into compliance with the provisions of §42 of the Internal Revenue Code and the Maryland LIHTC Program. CDA may extend the Correction Period for up to six (6) months for good cause.

### Notice to Internal Revenue Service.

CDA will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than forty-five (45) days after the end of the Correction Period and no earlier than the end of the Correction Period, whether or not the noncompliance or failure to certify is corrected. CDA will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the project owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of the project under §42(c)(1)(A) of the Internal Revenue Code is noncompliance that must be reported to the IRS. If the noncompliance or failure to certify is corrected within three (3) years after the end of the correction period, CDA will file Form 8823 with the IRS reporting the correction of the noncompliance or failure to certify.

## H.7 Retention of Records by CDA

CDA will retain records of noncompliance or failure to certify for six (6) years following CDA's filing of the related IRS Form 8823. In all other cases, CDA will retain the certifications and records for three (3) years from the end of the calendar year in which CDA receives them.

## H.8 Compliance Monitoring

CDA shall charge an annual compliance-monitoring fee for all low-income housing projects. (See [Section C.3 – Fees](#)). The fee shall be applicable to all rent or income restricted units in all new and existing low-income housing projects receiving LIHTC. The fee will be charged on or about January 1 of each year for the preceding calendar year.

All Projects must pay the Compliance Monitoring Fee during the Initial Compliance Period. In addition, projects which reach the end of the Initial Compliance Period on or after January 1, 2018 and are operating under the remaining term of the Extended Use Period will be charged the Compliance Monitoring Fee during the remaining term of the Extended Use Period.

Fees may be adjusted at the discretion of CDA to cover increases in compliance monitoring expenses generally, or in the case of instances of noncompliance of a particular project, at such project. CDA depends upon prompt remittance of compliance monitoring fees by project owners to fund its compliance monitoring activities. Since nonpayment of fees by a project owner may cause CDA to fail to meet its obligations under the Internal Revenue Code, CDA may treat the nonpayment of compliance monitoring fees as a decision on the part of that project owner to withdraw the project from the Maryland LIHTC Program, and CDA may report the withdrawal to the IRS.

### **H.9 Compliance Monitoring Re-Review**

CDA shall charge a re-review fee. (See [Section C.3](#) – Fees). The fee is for the review of the documentation submitted by the Sponsor to correct noncompliance previously reported by the IRS on an uncorrected Form 8823. The correction must occur within three (3) years after the end of the correction period and will be reported to the IRS on a corrected Form 8823.

### **H.10 Changes in Monitoring Procedures**

CDA reserves the right, without amending this Allocation Plan, to modify any and all compliance monitoring, reporting and notification procedures and requirements as necessary to comply with changes in applicable industry standards or federal law or regulations.

## **I. Miscellaneous**

### **I.1 Subsidy Layering Review**

HUD is required to undertake subsidy layering reviews of each project receiving HUD housing assistance to ensure that sponsors do not receive excessive government subsidies by combining HUD housing assistance with other forms of federal, State, or local assistance. For projects that combine HUD assistance with LIHTC, HUD has delegated the subsidy layering review to CDA. This delegation includes subsidy layering reviews for proposed Section 8 Project Based Voucher Housing Assistance Payments contracts. HUD and CDA have entered into a Memorandum of Understanding (MOU) governing the procedures that CDA must follow when undertaking its delegated subsidy layering review. Generally, the fee limits for a Developer's Fee, overhead, builder's profit, and other fee limits set forth in this Allocation Plan and the Guide will be applied by CDA in its subsidy layering review. Copies of the MOU are available from CDA upon request. CDA will complete the subsidy layering review for applicable projects after the sponsor and HUD submit relevant documentation for review. This information includes a copy of HUD's firm commitment and underwriting analysis, the sponsor's proposed development costs, and information concerning any syndication of the project. Specific documentation required by CDA includes those items referenced in HUD's guidelines and implementing instructions. CDA will undertake its delegated subsidy layering review

for each project after completion of HUD's and CDA's underwriting, if applicable. CDA will complete a second subsidy layering review at the time the IRS Form 8609 is issued for the project.

CDA reserves the right, without amending this Allocation Plan, to amend its subsidy layering procedures as necessary to comply with changes in applicable federal law or regulations, HUD guidelines, or the MOU.

## **I.2 Qualified Contracts**

If a project owner makes a request to CDA to obtain a "Qualified Contract" (as defined by the Internal Revenue Code) pursuant to §42(h)(6)(E) and (F), the project owner shall furnish to CDA and/or any other parties to the Qualified Contract with such information as CDA shall require, including, but not limited to: past and current operating expense and occupancy data; evidence of tenant notification; financial statements; environmental assessments; and past, pending, or threatened litigation. CDA reserves the right to adopt such additional requirements and procedures as are desirable in order to enable it and project owners to comply with any future requirements imposed by the IRS through the Internal Revenue Code.

## **I.3 Correspondence and Submittals**

All correspondence and submittals to be given to CDA pursuant to this Allocation Plan, for matters involving the application, reservation and allocation, and compliance monitoring processes shall be in writing and sent or delivered to:

Community Development Administration  
Maryland Department of Housing and Community Development  
7800 Harkins Road  
Lanham, Maryland 20706  
Attention: Tax Credit Administrator  
taxcredits.dhcd@maryland.gov

## **I.4 Partial Invalidity**

If any provision of this Allocation Plan, or the application of this Allocation Plan to any person or circumstances, is found by a court to any extent to be invalid or unenforceable, the remainder of this Allocation Plan, or the application of that provision to persons or circumstances other than those with respect to which it is held invalid or unenforceable, shall not be affected. Each provision of this Allocation Plan shall be valid and enforceable to the fullest extent permitted under State and federal law.

## **I.5 Disclaimer**

In making an allocation of LIHTC to a project owner, CDA will determine, based solely on information submitted in the project owner's application, that the low-income housing project, if completed as proposed in the application, will qualify for an allocation of LIHTC. CDA will neither underwrite the project nor certify that any building in a project will actually meet the requirement necessary to qualify for LIHTC. CDA will not perform any independent investigation as to the initial qualification of any building for LIHTC and will not perform any subsequent investigation or otherwise monitor the project or any building for eligibility for LIHTC in the future, except as

required by law. CDA will make no representation concerning the eligibility of any building in a project for LIHTC, the ability of any project owner or investor in a project to use LIHTC, or the status of a project as a “qualified low-income housing project” as that term is defined under §42 of the Internal Revenue Code. **The Internal Revenue Service is not bound by determinations made by CDA in the allocation of LIHTC or the monitoring of project compliance.**

Neither CDA, nor its officers, employees, agents, or authorized representatives will bear any liability to any project owner, investor, tenant, lender, or any other person or entity for any claim arising out of a project or the Maryland LIHTC Program. The applicant, sponsor, developer, and project owner are not the agents of CDA and have no authority to act on behalf of or bind CDA or its officers, employees, agents, or representatives. This limitation of liability applies not only to matters related to the Maryland LIHTC Program but also to any matter or claim involving the acquisition, development, financing, project ownership, operation, or management of any building or project, including an applicant's, project owner's, developer's, sponsor's, or any other party's failure to comply with any federal, State, or local environmental, labor, housing, employment discrimination, permitting, zoning, or land use law, regulation, or requirement.

No officer, employee, agent, or authorized representative of CDA shall be personally liable in any matter arising out of the administration of the Maryland LIHTC Program, including the undertakings or obligations set forth in this Allocation Plan or in any other document or agreement executed or delivered in conjunction with the Maryland LIHTC Program.

**Lenders and investors should consult with their own tax or investment counsel to determine whether a project qualifies for LIHTC, whether a lender or an investor may use LIHTC, and whether any project is financially feasible.**

**APPENDIX A: Maryland Department of Housing  
and Community Development  
Multifamily Rental Financing Program Guide**